

October 26, 2011

Richard R. Rios  
Olson Hagel & Fishburn  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-11-198**

Dear Mr. Rios:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).) In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### **QUESTION**

May a sponsored non-candidate controlled committee terminate if the committee is unable to meet the criteria identified in Regulation 18404(b) because of the pending investigation by the Federal Bureau of Investigation regarding the possible misappropriation of campaign funds by the committee's treasurer?

### **CONCLUSION**

To seek termination, please send a written request to the Commission, signed by either a newly hired treasurer or a principal officer of the committee, disclosing the amount of funds believed to be misappropriated and attesting to all of the following:

(1) The committee's sponsor does not know of any deposits into the committee's campaign account, and has not authorized campaign expenditures from the account,

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

subsequent to the closing date of the period covered by the committee's last filed campaign statement.

(2) The amount of funds misappropriated is less than the likely costs of recovering the funds.

(3) Any funds ultimately recovered will be immediately deposited into the bank account of a committee subsequently established by the same sponsor for the same purpose, paid to the Secretary of State for deposit in the General Fund of the State, or paid to the general fund of the local jurisdiction in which the committee is based.

### **FACTS**

You represent a general purpose committee sponsored by the International Brotherhood of Electrical Workers Local 569 (the "Sponsor"), which is known as the International Brotherhood of Electrical Workers Local 569 Committee on Political Education (the "IBEW Committee"). Currently, Kinde Durkee is listed as the treasurer of the committee. As treasurer, Ms. Durkee, and her company Durkee & Associates, has been responsible for administration of the IBEW Committee's bank accounts and for preparing and filing campaign reports.

However, Ms. Durkee is now suspected of the unprecedented misappropriation of campaign funds from many of the nearly 400 committees for which she was the designated treasurer. In light of the pending investigation by the Federal Bureau of Investigation, the First California Bank, at which a majority of the committee bank accounts under Ms. Durkee's control are maintained, has not granted committees access to their accounts. Instead, the bank has filed an interpleader action in Los Angeles County Superior Court asking the court to allocate the balance of the remaining funds held in Ms. Durkee's numerous committee bank accounts.

Notwithstanding the possible misappropriation of the committee's funds, the IBEW Committee last reported a balance of \$1,724.79 on its semi-annual report covering the period through June 30, 2011. The Sponsor has made no additional deposits and has not authorized any expenditures since June 30, 2011.

Given the relatively small balance in the committee account, the Sponsor believes that it will be more cost effective to terminate its existing committee and establish a new committee for its future campaign activity. Moreover, in light of the potential misappropriation of committee funds, the IBEW Committee cannot currently access its established committee bank account, confirm the balance of the account, or accurately report campaign activity that occurred unbeknownst to the Committee subsequent to the Committee's last campaign report.

### **ANALYSIS**

Section 84214 of the Act requires committees and candidates to terminate their filing obligation pursuant to regulations adopted by the Commission. Pursuant to Commission

Regulation 18404(b), a recipient committee<sup>2</sup> may terminate its status as a committee only if the committee treasurer completes the termination section of a Statement of Organization (Commission Form 410) declaring, under penalty of perjury, that the committee:

“(1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

“(2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

“(3) Has no surplus funds; and

“(4) Has filed all required campaign statements disclosing all reportable transactions.”

Nonetheless, Regulation 18404(b) was adopted as a general rule for termination assuming typical circumstances. Based upon the facts you have provided, the unprecedented misappropriation of campaign funds currently under investigation by the Federal Bureau of Investigation has resulted in exceptional circumstances that warrant additional consideration.

In your circumstances, where compliance is not feasible, it would be unreasonable to insist on strict compliance with Regulation 18404. For instance, while the IBEW Committee last reported a cash balance of \$1,724.79, these funds are currently inaccessible to the committee and the costs to recover the funds would likely exceed the balance. Additionally, if the funds were in fact misappropriated, it would be nearly impossible to accurately report the transactions that occurred without the committee's authorization. Finally and perhaps most significantly, at least for purposes of non-candidate controlled committees, we find no compelling reason to require a committee to incur the additional cost of maintaining the committee, under the circumstances you have described, so long as the following conditions have been, or will be, met:

(1) The committee's sponsor does not know of any deposits into the committee's campaign account, and has not authorized campaign expenditures from the account, subsequent to the closing date of the period covered by the committee's last filed campaign statement.

(2) The amount of funds misappropriated is less than the likely costs of recovering the funds.

(3) Any funds ultimately recovered will be immediately deposited into the bank account of a committee subsequently established by the same sponsor for the same purpose, paid to the Secretary of State for deposit in the General Fund of the State, or paid to the general fund of the local jurisdiction in which the committee is based.

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<sup>2</sup> A recipient committee is any person or combination of persons who directly or indirectly receive contributions totaling \$1,000 or more in a calendar year. (Section 82013(a).)

For these reasons, we find Regulation 18404(b) inapplicable to your particular circumstances. To seek termination, please send a written request to the Commission, signed by either a newly hired treasurer or a principal officer of the committee, disclosing the amount of funds believed to be misappropriated and attesting that each of the three conditions above are, or will be, met.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division